Supreme Court, U.S.
FILED
DEC 23 1971
ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-629

JUAN ISIDRO VALDEZ, TOMAS GALLEGOS, VENTURA CHAVEZ, ET AL., *Petitioners,*

v.

JOE BLACK, Chief of the New Mexico State Police; JOHN JOLLY, Adjutant General and Commander of the New Mexico National Guard; ALFONSO SANCHEZ, District Attorney for the First Judicial District of New Mexico; ET AL., *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT JOHN JOLLY, ADJUTANT GENERAL AND COMMANDER OF THE NEW MEXICO NATIONAL GUARD

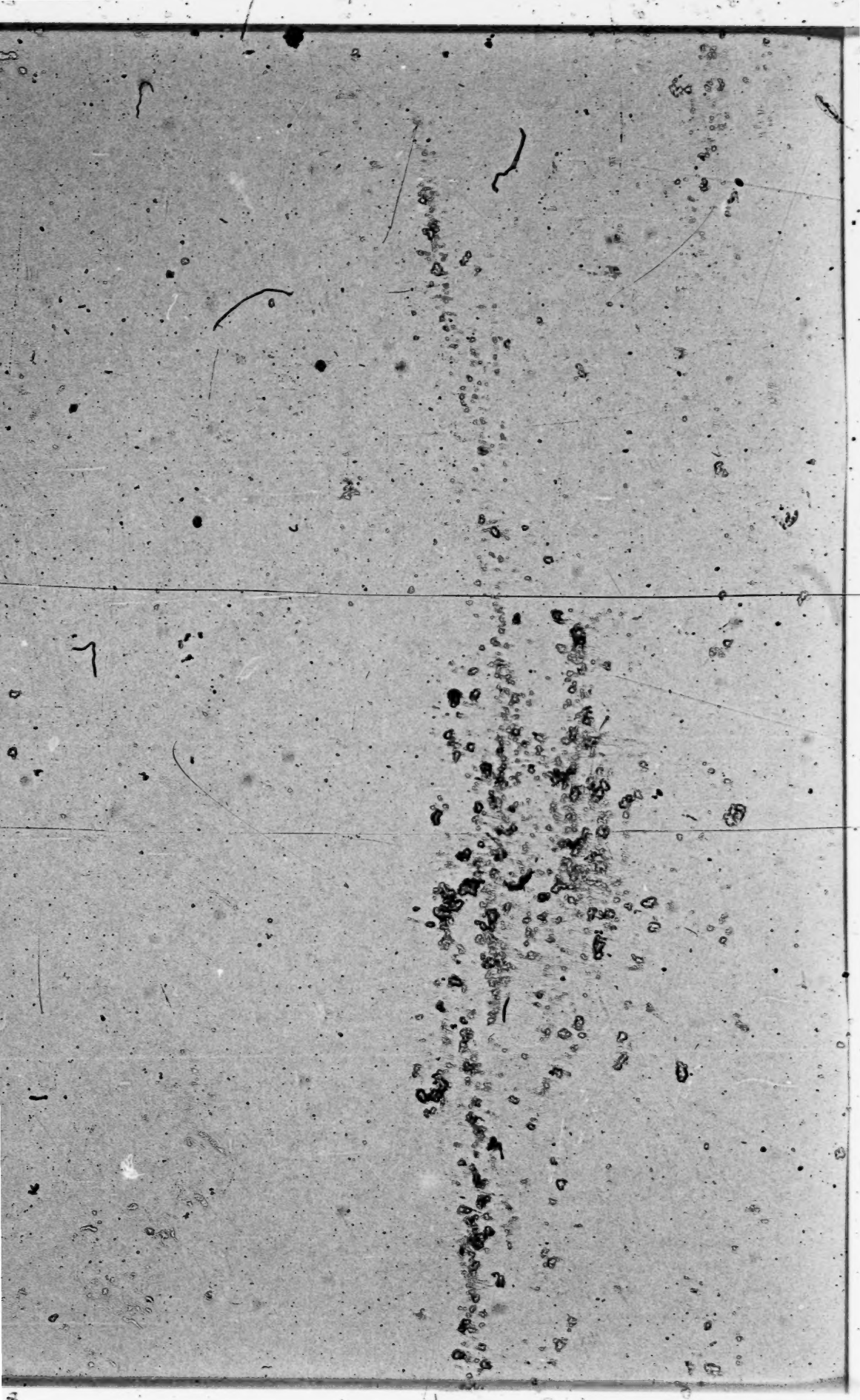
DAVID L. NORVELL
Attorney General
State of New Mexico
P. O. Box 2246
Santa Fe, New Mexico 87501

MARK B. THOMPSON, III
Special Assistant Attorney General
State of New Mexico
P. O. Box 787
Albuquerque, New Mexico 87103

Attorneys for Respondent
John Jolly

December 21, 1971

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-629

JUAN ISIDRO VALDEZ; TOMAS GALLEGOS; VENTURA CHAVEZ; MARIA MADRIL, individually and as the next friend of MERCEDES MADRIL, CORDELIA MADRIL, and DESI MADRIL; ROSARITO GARCIA, by her next friend ISABEL GARCIA; MARINO MOYA; JOE W. PADILLA; FILOMENA VALDEZ, individually and as the next friend of ELIZARDO VALDEZ, *Petitioners,*

v.

JOE BLACK, Chief of the New Mexico State Police; JOHN JOLLY, Adjutant General and Commander of the New Mexico National Guard; ALFONSO SANCHEZ, District Attorney for the First Judicial District of New Mexico; CARLOS JARAMILLO, JUAN SANTISTEVAN, LIONAL RODELA, FRED MARTINEZ, TOMMY HOLDER, HOOVER WIMBERLY, T. J. CHAVEZ, MARTIN VIGIL, MONROE ALEXANDER, ALBERT WHITEHOUSE, RUBEN GOMEZ, GILBERT A. SILVA, MAX WATSON, BRUCE GLASCO, Members of the New Mexico State Police; and WILLIAM A. OAKLEY, and JOE L. SANCHEZ, Members of the New Mexico National Guard, *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT JOHN JOLLY, ADJUTANT GENERAL AND COMMANDER OF THE NEW MEXICO NATIONAL GUARD

ARGUMENT

I. THE JURY WITH PROPER INSTRUCTIONS FROM THE COURT FOUND THAT PROBABLE CAUSE EXISTED FOR THE ARREST AND DETENTION OF THE PETITIONERS AFTER THE RAID ON THE COURTHOUSE AT TIERRA AMARILLA, NEW MEXICO.

The basic question in the action against respondent John Jolly, Commander of the New Mexico National Guard, was whether or not the New Mexico State Police had probable cause to arrest and detain the petitioners at the Tobias Leyba ranch.[1] As will be argued below, the question of the legality of a special standard of conduct for the National Guard is moot if there was probable cause for the arrest and detention by the State Police.

Petitioners erroneously approach the question of probable cause as if this action was a criminal prosecution. Neither the Court of Appeals nor the District Court held that there was probable cause for the arrest and detention at Canjilon. Both Courts merely found that the defendants had avoided a directed verdict by establishing a prima facie case of probable cause.

This respondent and others were sued under the Civil Rights Act for an alleged illegal arrest and de-

---

[1] Petitioners Tomas Gallegos, Ventura Chavez, Maria Madril, Mercedes Madril, Cordelia Madril, Desi Madril, Rosarito Garcia, Isabel Garcia, Marina Moya, and Joe W. Padilla, brought this action against John Jolly, Commander of the New Mexico National Guard, and two of Jolly's subordinates in the National Guard, a District Attorney, and various State Police Officers. (R. 55-58, 60 & 62). This portion of the action for damages for an alleged illegal arrest and detention at Canjilon, New Mexico, has been referred to in the the petition and will be referred to in this brief as the Canjilon incident. The action against one of the other National Guard defendants was dismissed and the other stayed prior to trial. (R. 139 & 154). The jury found for the respondent John Jolly and against these petitioners.

tention. The respondents had the burden of proving that the arrest and detention of petitioners as aiders and abetttors had been made on probable cause. See *Pierson* v. *Ray*, 386 U.S. 547, 566-57 (1967).

The evidence presented by respondents in support of their defense of probable cause may be summarized as follows: (1) That petitioners and others had camped at the Tobias Leyba ranch at Canjilon on the morning of June 5, 1967; (2) That the raid on the Courthouse at Tierra Amarilla, New Mexico was launched from the ranch and that a group of the raiders subsequently returned to the ranch; (3) That women and children were included in the raiding party at the Courthouse; (4) That persons specifically identified as having participated in the raid were found among the persons at the Tobias Leyba ranch after the raid; and (5) That other raiders were still at large.[2]

On the basis of the evidence, the Court allowed the case to go to the jury on the question of whether or not the police had probable cause to arrest the petitioners as aiders and abettors of the persons raiding the Courthouse. That the issue was properly one for the jury is well founded in federal civil rights law. *Giordano* v. *Lee*, 434 F.2d 1227, 1230 (8th Cir. 1970); *Marland* v. *Heyse*, 315 F.2d 312, 314 (10th Cir. 1963); *Lucero* v. *Donovan*, 354 F.2d 16, 21-22 (9th Cir. 1965); *cf. Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 158 (1970); see also *Director General* v. *Kastenbaum*, 263 U.S. 25, 28 (1923).

The Court instructed the jury carefully and at some length on the Canjilon incident. (T. 1546-51). The

[2] That these facts were known to the police officers at the time the arrest and detention was made is apparently not in dispute. See pages 23 and 24 of the Petition for Writ of Certiorari.

instructions can be summarized as follows: That the defendants had the burden of proving that probable cause existed for the arrest and detention of the petitioners as aiders and abettors; That it must be shown that the facts and circumstances within the arresting officer's knowledge must be sufficient to warrant a prudent or reasonable man in the belief that an offense had been committed; That good faith is not enough to constitute probable cause; That there is no such thing as protective custody.

On the basis of the evidence showing the complicity of the "campers" at the Leyba ranch in the armed raid on the Tierra Amarilla, New Mexico, Courthouse and the Court's instructions on the law of probable cause, the jury found against the petitioners and for the respondents. As was aptly put by the Court of Appeals, the petitioners had their day in court and this matter should be laid to rest.

II. WHEN THE JURY FOUND THAT PROBABLE CAUSE EXISTED FOR THE ARREST AND DETENTION OF THE PETITIONERS, THE QUESTION OF WHETHER OR NOT THE NATIONAL GUARD SHOULD BE JUDGED BY A "LOOSER STANDARD" BECAME MOOT.

The petitioners have fairly summarized the evidence bearing on the involvement of the respondent John Jolly as Commander of the New Mexico National Guard. To reiterate, the evidence indicated:

(1) That the Guard was called out by the acting Governor to support the State Police;

(2) That the mission of the Guard was to support the State Police and that Chief Black of the State Police was in command of the operation;

(3) That the Guard reached the Leyba ranch at Canjilon, New Mexico, after the State Police had

arrested the petitioners as aiders and abettors in the raid on the Courthouse;

(4) That General Jolly merely authorized his subordinates to comply with the request of the State Police that a guard be placed over the petitioners and others arrested by the police;

(5) That General Jolly did not personally enter the immediate area of the detention until the time when Chief Black released the petitioners.

It is true that the Court instructed the jury that the law regarding the National Guard was "slightly different" (T. 1547-48) (Petition App. p. 8a). Nevertheless, it is also true that the Court instructed the jury that

> If you believe from the evidence that the defendants had probable cause to believe that the plaintiffs had participated in or had aided and abetted those who participated in the Tierra Amarilla Courthouse raid, then you are instructed that defendants State Police Officials and State Policemen, the defendants *John Jolly* and Alfonso Sanchez would have probable cause to arrest and detain the plaintiffs for a reasonable length of time and would not be liable in damages to them. (T. 1551) (emphasis added).

Strictly as a matter of logic, it would appear that the instructions allowing the jury to judge the action of respondent John Jolly by a "looser standard" would come into play only if the jury found that the State Police did not have probable cause for their action. Since the undisputed facts were that the Guard merely supported the police, there would be no need to judge the Guard by a "looser standard" unless the police had failed to meet the "higher standard." In fact, the jury must have found that the State Police had met

the standards of probable cause because they found for the State Police and against the petitioners.

Furthermore, the Court by its instructions did not leave the jury with merely a game of logic. In the instruction quoted above, the Court specifically imposed the burden of proving probable cause on the respondent John Jolly as well as the State Police. Construing the instructions as a whole, it appears that the jury had to consider the question of the higher standard of probable cause in the case of the respondent John Jolly as well as that of the State Police.

In summary, it is clear that this action cannot serve as a vehicle for testing the validity of so-called lessor standards for National Guard conduct. It was simply not necessary for any such lessor standards to be applied in determining whether or not the respondent John Jolly was liable for damages to the petitioners.

CONCLUSION

For the foregoing reasons and for the reason that no grounds under United States Supreme Court Rule 19(1)(b) have been urged by petitioners, the cause should not be reviewed by this Court.

Respectfully submitted,

DAVID L. NORVELL
Attorney General
State of New Mexico
P. O. Box 2246
Santa Fe, New Mexico 87501

MARK B. THOMPSON, III
Special Assistant Attorney General
State of New Mexico
P. O. Box 787
Albuquerque, New Mexico 87103

Attorneys for Respondent
John Jolly

December 21, 1971